

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

ORSON WOLF,

Appellant-Respondent

v.

MIDWEST NEPHROLOGY CONSULTANTS, PC.,

Respondent-Appellant

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DOCKET NUMBER WD78606 and WD78619

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: April 19, 2016

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Bryan Round, Judge

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Appellate Judges:

Division Three  
James Edward Welsh, P.J., Thomas H. Newton, and Anthony Rex Gabbert, JJ.

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Attorneys:

Thomas Porto, Kansas City, MO

Counsel for Appellant-Respondent

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Attorneys:

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Co-Counsel for Respondent-Appellant  
Co-Counsel for Respondent-Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**ORSON WOLF, Appellant-Respondent, v. MIDWEST  
NEPHROLOGY CONSULTANTS, PC., Respondent-Appellant**

**WD78606 and WD78619**

**Jackson County**

Before Division Three Judges: Welsh, P.J., Newton, and Gabbert, JJ.

Orson Wolf appeals from the circuit court's judgment in a wrongful death action, in which a jury awarded Wolf \$459,429.02 for past economic damages but did not award noneconomic damages for the pain and suffering endured by the decedent prior to his death. Wolf appeals asserting that the circuit court erred in denying his motion for new trial because the failure to award past noneconomic damages was an abuse of discretion. Midwest Nephrology Consultants, Inc., cross-appeals asserting that the circuit court erred (1) in denying its motion for judgment notwithstanding the verdict because Wolf failed to establish the amount of damages with reasonable certainty and (2) in denying its alternative motion for new trial because the verdict was against the weight of the evidence and because the circuit court excluded relevant evidence and admitted speculative expert testimony.

**Affirmed**

**Division Three holds:**

(1) There is no bright line rule requiring reversal of cases where the jury awards medical expenses but does not award damages for pain and suffering. Such a disposition by the jury may be reversed but only if the verdict is determined to be inadequate. The jury was under no obligation to believe the evidence of pain and suffering, and the award of damages was within the evidence presented at trial. Moreover, as a statutorily created cause of action, the legislature has the power to define the remedy available for a wrongful death action. Damages for pain and suffering are not mandatory under the wrongful death statute.

(2) Midwest Nephrology failed to raise in its motion for directed verdict that Wolf failed to present substantial evidence to establish the amount of damages that were caused by Midwest Nephrology's alleged negligence. Midwest Nephrology, therefore, was precluded from obtaining a judgment notwithstanding the verdict in its favor on these grounds and is further precluded from obtaining appellate review of the circuit court's failure to enter judgment notwithstanding the verdict on these grounds.

(3) Midwest Nephrology combines three separate contentions in one point relied on. Multifarious points preserve nothing for appellate review.

Opinion by James Edward Welsh, Presiding Judge

April 19, 2016

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<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
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